

**STATE OF VERMONT  
DEPARTMENT OF BANKING, INSURANCE, SECURITIES  
AND HEALTH CARE ADMINISTRATION**

IN RE: BLUE CROSS AND BLUE  
SHIELD OF VERMONT

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DOCKET NO. 08-102-H

**CONSENT ORDER**

**JURISDICTION**

1. Pursuant to the authority contained in 8 V.S.A. §§ 11, 12, 13, 15, 4080a, 4512 and 4726 the Commissioner ("Commissioner") of the Department of Banking, Insurance, Securities and Health Care Administration ("Department") is charged with administering and enforcing the insurance laws of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with Vermont insurance laws and regulations.

2. Blue Cross and Blue Shield of Vermont ("BCBSVT") is a nonprofit hospital services corporation pursuant to 8 V.S.A. § 4512 with its principal place of business in Berlin, Vermont. BCBSVT is a quasi-public business subject to regulation by the Commissioner.

**FACTS**

3. The Department has undertaken a market conduct examination of BCBSVT covering the period of January 1, 2003 through December 31, 2005. The exam addressed return of premiums, record retention, use of rates, prompt payment of claims, claims settlement practices and other acts or practices generally and specifically as applied to the Vermont Health Services Group, Inc. ("VHSG").

4. The examiner found during the period under examination that:

a. BCBSVT, acting with knowledge and intent, "wrote off" credit balances owed to 596 cancelled groups and direct pay customers over a five-year period instead of refunding the money paid on premiums to the canceled groups and direct pay customers. BCBSVT states that when notified of the situation, BCBSVT acknowledged the seriousness of the violation, immediately discontinued the practice of writing off credit balances owed to cancelled customers, fully cooperated with the examiner and promptly returned all funds with interest. BCBSVT states further that the write offs occurred during a period when BCBSVT had adopted a policy of writing off both small credit and debit balances (initially \$ 50 or less and subsequently reduced to \$25 or less), which resulted in the writing off of credit balances and debit balances that were within the plan's monetary range and exceeded that range. The policy was adopted to promote administrative efficiency but without checking to see if the policy was in compliance with Vermont law, which requires BCBSVT to act as a fiduciary with respect to sums of money received by it.

b. BCBSVT failed on 114 occasions to return premiums in a timely manner to the persons and/or groups to whom it was owed. BCBSVT states that it has returned the premiums to these customers and paid them interest for the delay in returning their funds.

c. BCBSVT processed certain claims submitted for payment from other Blue Cross and Blue Shield plans. These claim files were not complete and were not maintained as to show clearly the inception, handling and disposition of each claim and were not readily available to the Commissioner for examination. BCBSVT states that it is a participant in the Blue Cross Blue Shield Association "Interplan Program." Under the

Interplan Program, BCBSVT may perform administrative services when the customer of an out-of-state Blue Plan receives services in Vermont. In these situations, the out-of-state Blue Plan is the "Home Plan" and is required to retain claims documentation, including claims, claim adjustments, pre-certification documentation and related materials according to Blue Cross Blue Shield Association rules. BCBSVT further states that it established a procedure during the exam that defines clear accountability and an escalation path for obtaining claim documents from other Blue Cross and Blue Shield plans when it makes payments on behalf of those plans. BCBSVT acknowledges that during the exam there were delays in producing documentation from Home Plans requested by the examiner.

d. BCBSVT filed its 1Q 2007 administrative charge rate component with the Department (assigned VFN 28526) on November 14, 2006, which the Department denied on December 11, 2006. BCBSVT used the administrative charge rate component that was filed and subsequently denied (VFN 28526) in its renewals of policies in November and December of 2006. BCBSVT states that there were significant mitigating circumstances in this situation. BCBSVT was having a continuous dialogue with the Department concerning these rate components and assumed that the Department knew that they would be using the filed rate components subject to future approval. Often in the past, BCBSVT would use filed rate components before approval with the disclosure and disclaimer that the rates were subject to the Department's approval and would reconcile retroactively, through one time adjustments or future billings, any differences between filed and approved rate components. BCBSVT viewed this situation as the same. BCBSVT expected the rates to change and was working with the Department to resolve

the issues. As in the past, customers were given notice on their bills that the rates used were subject to approval. Consequently, although the use of these rate components was a violation of the statute because the rate components were denied, all parties were aware that the rates used were not final. BCBSVT has now adjusted its practices so that this misinterpretation does not happen in the future.

BCBSVT states that BCBSVT and BISHCA have since agreed to a mutually satisfactory process for the filing and approval of rates. A copy of the agreed process is attached as Exhibit A. BCBSVT agrees to follow the agreed process henceforth and will consult with the Department before undertaking any action that is inconsistent with the agreed process.

e. BCBSVT filed its 1Q 2007 medical trend component with the Department (assigned VFN 28051) on October 4, 2006, which the Department denied on November 1, 2006. BCBSVT used the medical trend rate component that was filed and subsequently denied (VFN 28051) in its renewals of policies in October, November and December of 2006. BCBSVT's statement on this section is contained in 4.d above.

f. BCBSVT failed to pay interest, pursuant to 18 V.S.A. § 9418, on certain uncontested claims that were paid after the forty-five (45) day period in which to pay the claim without incurring interest

g. BCBSVT failed to pay interest, pursuant to 18 V.S.A. § 9418, on certain adjusted claims for which notice was provided that were paid post the forty-five (45) day period following the date that sufficient additional information was received by BCBSVT. BCBSVT states that with respect to this section 4.g and the following section 4.h, BCBSVT understands that these two paragraphs largely relate to the processing of

claims for which prior approvals or referrals were required. BCBSVT states that, two years prior to the start of the examination, BCBSVT changed its processes associated with prior approval and referral requirements because these two contract requirements were causing problems for its members. BCBSVT initiated numerous operational changes that have all but eliminated denials for late prior authorizations. BCBSVT also eliminated primary care physician referral requirements. The examiner's sample did not include claims within the timeframe when the foregoing process changes had been fully implemented by BCBSVT.

h. BCBSVT did not have a policy in place to act immediately on any authorizations that it received from claimants after the claims for services that required prior authorization had been denied for reason of lack of the proper authorizations. By practice, BCBSVT would only act upon the authorizations after the claimant made an additional inquiry, at which point BCBSVT would re-open the claim and re-adjudicate it. Otherwise, BCBSVT made no inquiries regarding the authorizations made no communications, written or oral, to the claimants regarding the authorizations. BCBSVT's statement on this section is contained in 4.g above.

i. BCBSVT issued insurance policy premium statements to insureds through the VHSG that did not disclose that the monthly premium due included association dues of \$2.08 per contract per month, payable to VHSG. Neither VHSG nor BCBSVT disclosed that these sums were in addition to premiums for health insurance and that these sums or a portion thereof would be and were donated to a charity.

j. BCBSVT failed to disclose to insureds, who were obtaining insurance through

the VHSG, that these insureds, in addition to purchasing health insurance, were purchasing a membership in the association and were entitled to active participation in the administering and operating of the corporation, including that the insureds had voting privileges and representation on the governing board and committees.

### **CONCLUSIONS OF LAW**

5. The Department has determined that the examiner's findings indicate that BCBSVT violated the following Vermont insurance laws:

- a. 8 V.S.A. § 4723 (Vermont Insurance Trade Practices Act) by engaging in the following unfair or deceptive acts or practices in the business of insurance as defined in 8 V.S.A. §4724, Subparagraphs: (1)(A) failure to adequately disclose the conditions of insurance policies, i.e. that the applicant must join VHSG in order to obtain health insurance, (9)(C) failure to have a policy in place to act on any authorization that it received from claimants if the authorization was received after the claim had been denied, (9)(D) failure to make inquiries or to communicate with claimants regarding authorizations and failure to act upon the authorization in any way until the claimant made an additional inquiry, and 8 V.S.A. §4724, Paragraphs: (12) failure to act as a fiduciary in regard to premiums and return premiums or other sums of money received by it in its capacity as insurer by failure to pay or transmit in a timely manner those sums of money to the persons to whom it was owed, (13) failure to adequately disclose the true nature of insurance policies or products offered, i.e. that the applicant must join VHSG in order to obtain

health insurance, and (19) failure to comply with any rate filed with the commissioner; and

b. 18 V.S.A. § 9418 by its failure to pay interest as stated in paragraphs 4(f) and 4(g); and

c. Vermont Department of Banking, Insurance, Securities & Health Care Administration Regulation 99-1 titled Record Retention in that (1) its claim files were not maintained so that the claims records were readily available to the Commissioner and (2) its claims files were not complete and were not maintained as to show clearly the inception, handling and disposition of each claim.

6. The examiner's findings show that BCBSVT committed or performed the acts and/or practices as described in paragraph 4(h) with such frequency as to indicate a business practice.

**WHEREAS,**

7. The Commissioner, pursuant to 8 V.S.A. § 3573(c), may terminate or suspend an examination in order to pursue other regulatory action. The Commissioner, as a result of BCBSVT's cooperation with the Department to address the substantive findings of the examiner, elects to terminate the present market conduct examination of BCBSVT.

8. BCBSVT has agreed to resolve this matter by entering into this Consent Order with the Department on the terms and conditions hereinafter set forth in lieu of proceeding with further litigation.

9. BCBSVT has admitted the jurisdiction of the Commissioner and has knowingly, voluntarily and unconditionally executed a written consent to the entry of this Order, which Consent includes BCBSVT's agreement to comply with and to be subject to all terms, conditions and obligations of this Consent Order. In the Consent, BCBSVT has knowingly, voluntarily and unconditionally waived any rights to a hearing and appeal before the Commissioner or the Commissioner's designee, BCBSVT has knowingly, voluntarily and unconditionally waived all other procedures otherwise available under Vermont law with respect to the issuance of this Order, BCBSVT has knowingly, voluntarily and unconditionally waived any rights to judicial review by any court by way of suit, appeal, or extraordinary remedy with respect to the issuance of this Consent Order, and BCBSVT has knowingly, voluntarily and unconditionally waived compliance with the provisions of 3 V.S.A. Chapter 25 regarding contested cases.

### **ORDER**

#### **NOW, THEREFORE, IT IS HERBY ORDERED THAT:**

- A. BCBSVT shall pay an administrative penalty in the amount of two hundred fifty thousand dollars (\$250,000.00). Said two hundred fifty thousand dollars (\$250,000.00) shall be paid to the Department within ten (10) days of the signing of this order. The administrative penalty shall be paid out of surplus and shall not be passed on to customers or subscribers through any administrative rate filings.
- B. BCBSVT shall submit a compliance plan within 60 days of the signing of this order to the Department for approval that makes senior management



accountable for BCBSVT's compliance with Vermont Insurance Statutes, Insurance and Health Care Administration Regulations and Commissioner's Orders. Such compliance plan shall include, but not be limited to, the following:

- i. a requirement that beginning in calendar year 2009, and continuing thereafter, at least 20% of the compensation paid to senior management under the BCBSVT annual incentive compensation program shall be based upon compliance with said plan;
- ii. the requirement of an annual certification under oath signed by the President and the General Counsel that BCBSVT is complying with the plan.
- iii. a requirement that within 60 days after the Department approves the compliance plan, BCBSVT will deliver targeted training to appropriate employees on actions required to comply with this Consent Order and that BCBSVT will provide similar training for calendar years 2009-2011;
- iv. a requirement that BCBSVT, for calendar years 2009-2011, conduct periodic internal audits on BCBSVT's compliance with the requirements of this Consent Order and that reports of each such internal audit be delivered to the audit committee of BCBSVT's board of directors; and
- v. a requirement that, for calendar years 2009-2011, BCBSVT's Compliance Officer include a report on BCBSVT's compliance with this Consent Order, as part of a report on BCBSVT's adherence to the compliance plan, as a part of the Compliance Officer's annual report to the board of directors.

vi. The compliance plan will be supplemental to BCBSVT's existing Compliance Program and Standards of Business Conduct, as amended from time to time. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over BCBSVT and the subject matter of the plan in the event that the plan submitted by BCBSVT is disapproved or approved with conditions and to monitor implementation of the plan. Any change to the compliance plan shall require the Department's prior approval in writing.

- C. VHSG shall discontinue its sponsorship of health insurance as an association as of January 1, 2009. BCBSVT has met with the Department and has obtained the Department's approval of the proposed transition to Vermont Businesses for Social Responsibility (VBSR). BCBSVT shall prepare a written notice and disclosure to all VHSG members explaining that VHSG will no longer be offering health insurance, describing VBSR and the transition to VBSR and notifying each member that there are alternative health coverage options available and shall file such notice and disclosure with the Department by October 15, 2008 for the Department's review and approval. The notice and disclosure shall be sent to all VHSG members by November 3, 2008. The Commissioner shall retain jurisdiction over this matter in the event that the association rate filing that has been submitted for the VBSR pool is disapproved.
- D. BCBSVT shall submit a plan within 60 days of the signing of this order which describes how BCBSVT will maintain claims records so as to show clearly the

inception, handling and disposition of each claim as provided in Department Regulation 99-1 (Record Retention), including how BCBSVT will preserve the date of initial receipt of all claims and how it will make the initial receipt date readily available to the Commissioner so that compliance with 18 V.S.A. § 9418 (Vermont's prompt pay statute) can be assessed. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over BCBSVT and the subject matter of the plan in the event that the plan submitted by BCBSVT is disapproved or approved with conditions and to monitor implementation of the plan.

E. BCBSVT shall submit a plan within 60 days of the signing of this order to the Department for approval describing how it will handle minimum amounts of interest due providers/subscribers and premium refunds due current/former customers. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over BCBSVT and the subject matter of the plan in the event that the plan submitted by BCBSVT is disapproved or approved with conditions and to monitor implementation of the plan.

F. BCBSVT shall submit rate filings to the Department for approval in accordance with the Memorandum of Understanding and Timelines for the Rate Filings and Approval Process dated March 7, 2008 as subsequently amended as agreed by the parties and as shown on the chart setting forth the deadlines for submission and approval of rate filings attached as Attachment

1. The deadlines shall automatically renew for future years not depicted or set forth on Attachment 1, unless changed by mutual agreement of the Department and BCBSVT. The Commissioner shall retain jurisdiction over BCBSVT in order to enforce compliance with the deadlines for submission and approval of rate filings as set forth in Attachment 1 and any mutually agreed changes made to those deadlines.

- G. BCBSVT shall submit an IT plan within 60 days of the signing of this order to the Department for approval describing how it will upgrade its claims system, including software and hardware, so that it would improve its capacity to make timely payments for services and interest and to match authorizations received subsequent to rendering of services to the claim in a timely manner. The upgrade shall be fully implemented within twelve (12) months of the signing of this order by the Commissioner, unless such implementation has been made impossible due to factors outside of the control of BCBSVT; and such implementation date shall be included in the plan along with timetables set for each step of the upgrading process. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over BCBSVT and the subject matter of the plan in the event that the plan submitted by BCBSVT is disapproved or approved with conditions and to monitor implementation of the plan.
- H. BCBSVT shall submit a plan within 60 days of the signing of this order to the Department for approval describing how its ITS/Blue Card claims will comply with 18 V.S.A. §9418 (to the extent that it is applicable) and Regulation 99-1

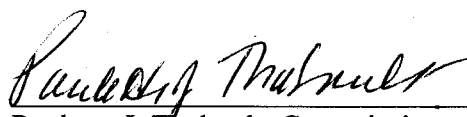
(record retention). The plan will not require that BCBSVT become the custodian of the documentation that other Blue Plans are required to maintain under Blue Cross Blue Shield Association rules but rather that BCBSVT assure access to such documentation consistent with Regulation 99-1. The Commissioner may approve such plan, disapprove such plan, or approve such plan with conditions. The Commissioner shall retain jurisdiction over BCBSVT and the subject matter of the plan in the event that the plan submitted by BCBSVT is disapproved or approved with conditions and to monitor implementation of the plan.

- I. Failure to adhere to, or comply with, any of the terms of this Order, or any provision of any approved plan submitted pursuant to this Order or any condition/s imposed upon any approved plan submitted pursuant to this Order shall constitute a violation of a lawful order of the Commissioner and shall be a separate violation of the insurance laws of the State of Vermont and shall subject BCBSVT to administrative action or sanctions as the Commissioner deems appropriate. The Department shall retain jurisdiction over this matter for the purpose of enabling the Department to enforce such order. BCBSVT shall have a right to a hearing on the Department's allegation of any such violation before a final determination is made. BCBSVT shall have the right to appeal any such final determination.
- J. Nothing in this Consent Order shall be construed to prevent the Department from examining or investigating BCBSVT regarding any issue, other than with respect to matters identified in this Consent Order. Nothing contained in

this Consent Order shall restrain or limit the Department in responding to and addressing any complaint involving BCBSVT that is filed with the Department, and nothing contained in this Consent Order shall preclude the Department from pursuing any violation of law.

Dated at Montpelier, Vermont this 16<sup>th</sup> day of October, 2008.

**VERMONT DEPARTMENT OF  
BANKING, INSURANCE,  
SECURITIES, AND HEALTH CARE  
ADMINISTRATION**

  
Paulette J. Thabault, Commissioner

**BCBSVT'S CONSENT**

1. Blue Cross and Blue Shield ("BCBSVT") hereby admits the jurisdiction of the Vermont Commissioner of Banking, Insurance, Securities and Health Care Administration ("Commissioner") over the subject matter of the Consent Order, Docket No. 08-102-H ("Consent Order") and that the Commissioner retains jurisdiction over this matter for the purpose of enforcing this order, including the approving, disapproving or approving with conditions, of any plan that the order requires BCBSVT to submit to the Department.

2. BCBSVT knowingly, voluntarily and unconditionally waives any and all rights to a hearing before the Commissioner or the Commissioner's designee and all other procedures otherwise available under Vermont law with respect to the entry of the Consent Order. BCBSVT also knowingly, voluntarily and unconditionally waives compliance with the provisions of 3 V.S.A. Chapter 25 regarding contested cases. BCBSVT acknowledges that, upon execution by the Commissioner, the Consent Order constitutes a valid order duly rendered by the Commissioner.

3. BCBSVT knowingly, voluntarily and unconditionally waives any right it may have to judicial or administrative review by way of suit, appeal, or extraordinary remedy resulting from the issuance of the Consent Order. Provided however that BCBSVT shall have a right to a hearing on any allegation that BCBSVT failed to adhere to or violated any of the requirements of this Consent Order and the right to appeal any resulting determination.

4. BCBSVT acknowledges and agrees that it consents to the entry of the Consent Order knowingly, voluntarily and unconditionally and that no promise was made, nor was any coercion used, to induce Respondent to give such consent.

5. Without admitting or denying any of the stated facts or conclusions of law stated in the Consent Order (other than as to the jurisdiction of the Commissioner; personal and subject matter, and the retention of jurisdiction for the purpose of enforcing this order), BCBSVT acknowledges its understanding of and agrees to all terms, conditions, and obligations contained in the Consent Order.

BLUE CROSS AND BLUE SHIELD OF VERMONT

By:

William Milnes

Date:

10/16/08

Title:

President and CEO

STATE OF

Vermont

COUNTY OF

Washington

On the 16<sup>th</sup> day of October 2008, personally appeared William Milnes, as authorized representative of Blue Cross and Blue Shield of Vermont, who states that the execution of the foregoing Consent is his/her free act and deed and the free act and deed of Blue Cross and Blue Shield of Vermont.

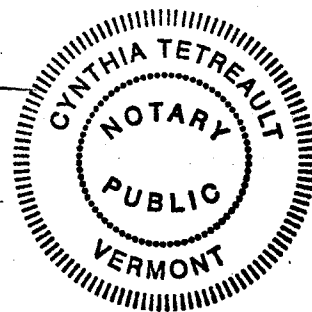
Before me,

Cynthia Tetreault

Notary Public

My commission expires

2/10/11





## Attachment 1 - Revised 04/04/08

## Filings Submitted For Approval

July	August	Sept.	Oct.	Nov	Dec	Jan	Feb	March	April	May	June	July	August	Sept.	Oct.
July	August	Sept.	Oct.	Nov	Dec	Jan									
07/01 deadline for submitting changes to methodology	08/01 deadline for submitting components (1Q Trend)	09/15 deadline for submitting rate changes (small group, association, non-group)		11/01 - 1Q premium rates must be approved (and members notified of new premium by 11/15)		1Q Filing Rates Effective									
	08/01 Deadline for submitting Med Supp filing	Med Supp Hearing 9/15 - 10/15		11/01 Med Supp Rates must be Approved (and members notified by 11/15)		Med Supp Rates Effective									
		Catamount - 09/23 deadline for submitting rates for 1Q,2Q		11/01 Catmount rates must be approved (and members notified by 11/15)		Catamount - 1Q and 2Q rates effective									
			Oct.	Nov	Dec	Jan	Feb	March	April						
			10/01 deadline for submitting changes to methodology	11/01 deadline for submitting components (2Q Trend, Admin Exp for 2 q's, and annual S/L for 4q's.)	12/15 deadline for submitting rate changes (small group, association, non-group)		02/01 - 2Q premium rates must be approved (and members notified of new premium by 02/15)		2Q Filing Rates Effective						
						Jan	Feb	March	April	May	June	July			
						01/01 deadline for submitting changes to methodology	02/01 deadline for submitting components (3Q Trend)	03/15 deadline for submitting rate changes (small group, association, non-group, and annual safety net)		05/01 - 3Q premium rates must be approved (and members notified of new premium by 05/15)		3Q Filing Rates Effective			
								Catamount - 03/21 deadline for submitting rates for 3Q,4Q		05/01 Catamount rates must be approved (and members notified by 11/15)		Catamount - 3Q and 4Q rates effective			
									April	May	June	July	August	Sept.	Oct.
									04/01 deadline for submitting changes to methodology	05/01 deadline for submitting components (4Q Trend, Admin Exp. For 2q's.)	06/15 deadline for submitting rate changes (small group, association, non-group)		08/01 - 4Q premium rates must be approved (and members notified of new premium by 08/15)		4Q Filing Rates Effective

## Other Submissions (Non-Filing)

July	August	Sept.	Oct.	Nov	Dec	Jan	Feb	March	April	May	June	July	August	Sept.	Oct.
	08/01 Supplemental Exhibits for 1Q Rate Filings			11/01 Supplemental Exhibits for 2Q Rate Filings			02/01 Supplemental Exhibits for 3Q Rate Filings			05/01 Supplemental Exhibits for 4Q Rate Filings					
	08/01 Quarterly Administrative Expense Report - per Commissioner's letter dated 01/15/08			11/01 Quarterly Administrative Expense Report - per Commissioner's letter dated 01/15/08			02/01 Quarterly Administrative Expense Report - per Commissioner's letter dated 01/15/08			05/01 Quarterly Administrative Expense Report - per Commissioner's letter dated 01/15/08					